

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
vs.)	No. 4:12CR472RWS(TIA)
)	
MICHAEL SMITH,)	
)	
Defendant.)	

MOTION TO SUPPRESS STATEMENTS AND
FOR LEAVE TO FILE SUCH MOTION OUT OF TIME

COMES NOW defendant Michael Smith by and through counsel, Assistant Federal Public Defender Kevin C. Curran, and moves the Court to suppress statements. It is respectfully requested that the Court grant counsel leave to file this Motion out of Time. In support of this motion he states:

1. On October 22, 2010 the police were called to the report of a "shots fired" in the area of Lee and Fair in the City of St. Louis. A black Dodge Durango was allegedly taken at gun-point from the owner.
2. Later that day, Kwame Hill was arrested in the Dodge Durango that had been stolen. After his arrest he told police that he had not stolen the vehicle but had received it from two other individuals who he knew as "Lil Mike" and "Casper." Hill identified a picture of Michael Smith as "Lil Mike" and Leon Jackson as "Casper."
3. Michael Smith was arrested on October 22, 2010, interrogated by the police, and made a statement. Smith was arrested without probable cause and his arrest was not based upon a lawfully issued warrant.
4. After viewing a line-up, the owner of the Dodge Durango identified Leon

Jackson as the person who had stolen the vehicle from him at gun point. He indicated that only one person was involved in the robbery.

5. Michael Smith was subpoenaed by the government to testify and did testify before the Grand Jury on July 11, 2012.

6. Before Smith gave his testimony to the Grand Jury, he was not informed of his right to counsel, his right to remain silent, or his Fifth Amendment privilege against compulsory incrimination.

7. On July 17, 2012, six days after Smith testified before the Grand Jury, he was given a polygraph exam at the office of agents of the Bureau of Alcohol, Tobacco, and Firearms ("ATF"). The examiner concluded that his responses during the examination were deceptive.

8. Immediately after the polygraph exam Smith was questioned by ATF agents and made incriminating statements regarding the robbery of the Dodge Durango on October 22, 2010.

9. Before Smith was questioned by the ATF Agents, he was not free to leave and he was not informed of his right to counsel, his right to remain silent, or his Fifth Amendment privilege against compulsory incrimination.

10. Any testimony or other evidence of Smith's statements to the police in October 2010, ATF Agents in 2012, and to the Grand Jury in 2012, were obtained as a direct result of a violation of his constitutional rights under the Fifth Amendment and should be suppressed.

11. Supporting authority will be provided after an evidentiary hearing at which time the full circumstances of the instant case may be established.

It is respectfully requested that this Court grant leave to file this Motion out of time.

Respectfully submitted,

/s/Kevin C. Curran

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2013, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon Thomas Mehan, Assistant United States Attorney.

/s/Kevin C. Curran

KEVIN C. CURRAN
Assistant Federal Public Defender